

TITLE 3

RULES OF COURT

Section 1: General Provisions

RULE 1 TITLE

These rules may be known and cited as the Rules of the Hoopa Valley Tribal Court. These rules will take effect on SEPTEMBER 8, 1998. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the Court their application in a particular action pending when the amended rules take effect would not be feasible or would work injustice, in which the former procedure applies.

[See Tribal caselaw for precedent. FRCP 85, 86 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

RULE 2 APPLICABILITY

These rules are applicable to all proceedings relating to the Constitution and Bylaws of the Hoopa Valley Tribe; Law and Order Code of the Hoopa Valley Tribe; other statutes, motions, and resolutions passed by the Hoopa Valley Tribal Council; policies, procedures and actions taken by tribal entities; and the common law and the traditional law of the Hoopa Valley Tribe.

[See Tribal caselaw for precedent. FRCP 81 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

RULE 3 GOVERNING PRINCIPLES

These Rules of Court are intended to provide for the just determination of every proceeding and shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense or delay. They shall be interpreted so as to be consistent with other provisions of tribal law.

RULE 4 SCOPE OF RULES

These Rules govern the administration and procedures of the Hoopa Valley Tribal Court. The Rules are subject to change by the Court with notice, but such changes shall not be interpreted so as to prejudice the rights of parties in pending cases. This Title is a part of the Hoopa Valley Tribal Code and copies will be maintained therein. Copies of these Rules shall be kept in the office of the Clerk of the Court. Any person intending to file an action in Tribal Court may request a copy of the Rules of Court during normal business hours. The Court reserves the right to impose reasonable charges for providing such copies.

[Title I the “judges” make recommendations to the Tribal Council for enactment or amendments of Rules of Court. Title I, § 1.3.03.]

- (a) If any provision of this Title is declared invalid, the remaining provisions shall not be affected.

RULE 5 **LOCATION OF COURT**

- (a) The Clerk's office shall be located at :
Hoopa Valley Tribal Court
Tribal Court Building
Hoopa Shopping Center
Hoopa, California, 95546

- (b) Court sessions shall be held at:

Hoopa Valley Tribal Court
Tribal Court Building
Hoopa Shopping Center
Hoopa, California, 95546

Or at such other place in Hoopa as may be determined by the Court.

- (c) The hours of the Court shall be from 8:00 a.m. to 5:00 p.m., Monday through Friday, and will be closed on all Tribal Holidays.

Section 2: Court Administration

RULE 6 **TRIBAL COURT CLERK**

(a) Designation and Supervision: A Court Clerk shall be appointed by the Chief Judge to work under the supervision of the Chief Judge. The Clerk before assuming his or her duties shall be bonded at Tribal expense in an amount determined by the Tribal Council. The Clerk shall be responsible for the following

(1) Books and Records Kept By the Clerk and Entries Therein. The Clerk shall keep a book known as a "civil docket" and shall enter therein each civil action to which these rules are made applicable. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereon the first entry of the action is made. All papers filed with the Clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be entered chronologically in the civil docket on the folio assigned to the action and shall be marked with its file number. These entries shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The entry of an order or judgment shall show the date the entry is made. When in an action trial by jury has been ordered the Clerk shall enter the "jury" on the folio assigned to that action.

(2) Dismissal Calendar. The Clerk will maintain a dismissal or status conference calendar. Unless the Chief Judge otherwise orders, semiannually each year the Clerk shall order the call of all civil cases which have been pending for more than six months and in which the plaintiff has failed to take action for six months. In the discretion of the Judge, civil cases may be added to or deleted from the call of cases on the dismissal calendar.

(A) Notice; Order to Show Cause; Response. The Clerk shall notify all parties to show cause why the action should or should not be dismissed for lack of prosecution. All parties will have thirty days to file a response in support of or in opposition to dismissal of the action. Failure to file a timely response to the dismissal notice may result in denial of the right to oppose or urge dismissal and to present oral argument at the hearing, and may be deemed to be an admission that the failure to prosecute has resulted in prejudice to the opposing side.

(B) Hearing; Disposition. At the hearing the Court may (1) dismiss the action for lack of prosecution; (2) continue the matter to a later date for further proceedings, with or without specific directions to the parties (3) set the action for status conference or pretrial conference, or (4) drop the action from the dismissal calendar if the facts so warrant, with or without such additional orders as may be appropriate.

(C) Motions to Dismiss for Lack of Prosecution. This Rule does not impair the right of a party to move for dismissal under the provisions of Rule 15(b).

(3) Civil Judgments and Orders. The Clerk shall keep a correct copy of every final judgment or appealable order, or order affecting title to or lien upon real or personal property, and any other order which the court by direct to be kept.

(4) Indices; Calendars. Suitable guides for facilitating references or indices of the civil docket and of every civil judgment and order referred to in subdivision (2) of this rule shall be kept by the Clerk under the direction of the Court. There shall be prepared under the direction of the Court calendars of all actions ready for trial.

(5) Other Duties: Other duties shall include, but are not limited to, receiving and maintaining documents filed with the Court, issuing notices and summons to appear, recording hearings, marking evidence, maintaining the Court calendar, mailing Court decisions, and clerical support. The Clerk shall render assistance in answering question concerning court procedures. The Court Clerk shall maintain a record of all proceedings before the Court, shall administer the oaths to witnesses, and shall perform such other duties as the Chief Judge may designate.

(c) Prohibition on Providing Legal Advice. The Clerk will answer questions on Court procedure, but may not provide legal advice.

(d) Oath of office. Before taking office the Court Clerk shall take the following oath:

“I, _____, do solemnly swear:

- 1) I will uphold the Law and order Code of the Hoopa Valley Tribe to the best of my ability;
- 2) I will perform the Clerk's duties faithfully and honestly;
- 3) I will not let personal views and relationships affect the performance of the Clerk's duties;
- 4) I will not attempt to influence the course of any Court proceedings;
- 5) I will not reveal any confidential matters which I learn in the course of official duties."

"Subscribed and sworn to before me this _____ day of _____, 19__."

Tribal Court Judge

Section 3: Tribal Bar

RULE 7 SPOKESPERSONS IN TRIBAL COURT AND TRIBAL BAR

(a) Admission to the Tribal Court Bar. Persons holding themselves out to be attorneys and practicing law in the area of Hoopa Tribal Law within the boundaries of the Hoopa Valley Indian Reservation must be members of the Tribal Court Bar. To be eligible for the Tribal Court Bar, a person must be at least eighteen years of age,; must not have been convicted of a felony; must not have been convicted of a misdemeanor involving moral turpitude. To be admitted to the Tribal Court Bar, a person must apply for Bar membership, pass a Tribal Bar examination, pay the admission fee, and sign the Tribal Spokespersons Oath.

(b) Right to Spokesperson. Any person appearing in Tribal Court shall have the right to be represented by a spokesperson at his or her own expense, provided that such spokesperson shall first have been admitted to the Tribal Court Bar. A spokesperson need not be an attorney. No spokesperson may be a member of the Tribal Council or an employee of the Tribal Court or Tribal Police, though such persons may represent themselves in their own cases.

(c) Spokesperson's oath. The oath which all persons desiring to appear as spokesperson in the Tribal Court shall be taken as follows:

"SPOKESPERSON'S OATH"

"I, (state your name) , do solemnly swear that:

1. I have read, and am competent in my knowledge of, the Rules of Court;
2. I will respect and obey the Constitution and Bylaws of the Hoopa Valley Tribe in all respects;
3. I will abide by the Rules established by the Hoopa Tribal Court;
4. I will, at all times, maintain the respect due the Tribal Court and its officers;

5. I will not counsel or speak for any suit or proceedings which shall appear to me to be unjust, or any defense except such as I believe to be honestly debatable under the law of the Tribe;
6. I will employ such means only as are consistent with truth and honor and will never seek to mislead a judge or jury by any false statement;
7. I will abstain from all offensive conduct in the Tribal Court.”
8. As a spokesperson, I will attend all scheduled hearings on behalf of the person or person’s that I represent and will be prepared to represent their best interests at all times during all hearings. I understand that failing to appear and failing to carry out my duties as a spokesperson diligently are grounds for disbarment.
9. I will comply with all orders of the court.

“Subscribed and sworn to before me this _____ day of _____, 19____.”

Judge or Clerk

(d) Tribal Court Bar Roster. The Clerk of the Tribal Court will maintain a roster of all spokespersons admitted to practice before the Tribal Court. The Clerk will also keep on file the signed oaths of all such persons and the expiration date of each oath.

(e) Tribal Bar Admission and Membership Fees. The Bar application and testing fee is twenty five dollars (\$25.00). Bar membership fees are twenty five dollars (\$25.00) per annum. Bar memberships shall be from January 1 to December 31 of each year. Spokespersons and attorneys joining the Tribal Court bar after January 1 shall have their Bar dues prorated from the date of their admission to the Bar to December 31 of the same year. Billing for the annual fee shall occur in the preceding December, to be paid by the following January 31. There will only be one billing per year. Failure to pay the annual membership fees will result in removal from the Tribal Court Bar.

(f) Sanctions. If a party representing himself / herself, or a spokesperson, or a party’s attorney fails to obey a scheduling or pre-trial order, or if no appearance is made on behalf of a party or party’s spokesperson or attorney is substantially unprepared to participate in the conference, or if a party’s spokesperson or attorney fails to participate in good faith, the judge, upon motion or the judge’s own initiative, may make such orders with regard thereto to stay further proceedings until the order is obeyed, or dismissing the action or proceeding on any part thereof, or rendering a judgment by default against the disobedient party. In lieu of any of the foregoing orders or in addition thereto, the judge may treat as a contempt of court the failure to obey any orders issued by the court.

[See Tribal caselaw for precedent. FRCP 16 (f) may be looked to, and cases pertaining to this rule may be cited as persuasive argument]

(1) Failure to disclose; false or misleading disclosure. A party that without substantial justice fails to disclose information shall not, unless the failure is harmless, be permitted to use at trial, at a hearing, or on a motion, any witness or information not so disclosed.

In addition, or in lieu of this sanction, the court, on motion, after affording may impose sanctions requiring payment of reasonable expenses, including attorney's fees, any sanctions authorized in subsection (f) of this Rule, and may include informing the jury of the failure to make the disclosure.

(2) Refusal to admit. If a party fails to admit the genuineness of any document or the truth of any matter, and if the party requesting the admission thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the party reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (A) the request was held objectionable pursuant to Title 2, § 2.4.22, or (B) the admission sought was of not substantial importance, or (C) the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or (D) there was other good reason for the failure to admit.

(3) Failure to Participate in the Framing of a Discovery Plan; Discovery. If a party or a party's spokesperson or attorney fails to participate in good faith in development and submission of a discovery plan pursuant to Title 2§ 2.4.7, or fails to cooperate in discovery pursuant to Title 2, §§ 2.4.9 et seq., the court may after opportunity for a hearing, require such party or attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

(g) Tribal Court Bar Disbarment. Any spokesperson violating the spokesperson's oath, or violating the Hoopa Valley Court Code of Ethics, or failing to diligently or competently represent the party that he represents, shall be subject to disbarment. The trial judge shall prepare, writing, a complaint against such spokesperson, including reasons for disbarment. Within twenty (20) days of receipt of such complaint, the trial judge shall hold a hearing at which time the spokesperson involved may present witnesses and a defense of his/her actions.

(1) Appeal. Any person denied admission to the Tribal Court Bar or any spokesperson found guilty of contempt of court by the trial judge may appeal in accordance with the procedures established in this Code. Such person or spokesperson shall have the right to a hearing within ten days of his/her denial or conviction and shall have the right to present witnesses and a present a defense. The decision of a majority of the appellate panel shall be final. [Formerly Title , § 1.4.08]

Section 5: Law. Procedure, Records, Library

RULE 8

LAW TO BE APPLIED

(a) Tribal Law; Federal Law. The Court shall apply the laws of the Hoopa Valley Tribe in each case filed with the Court unless the Court's jurisdiction over a matter is subject to Federal law, or is established by an intertribal agreement entered into pursuant to Title I, § 1.2.15. Where jurisdiction is established by intertribal agreement, the Court will apply the laws of the participating tribe. The Court shall look to prior judicial precedent consistent with this

Rule as amended in deciding cases before it. Appellate Court Decisions shall have precedent over the decisions of the trial court.

(b) Precedent. Where the issue to be determined by the Court is subject to federal law or regulation, federal court precedent shall be relied on for proper disposition of the case.

(c) Applicability. In no situation shall any enactment, ordinance, resolution, or otherwise apply to any pending cases before the Tribal Court at the time action is taken by the Tribal Council. [Formerly Title 1, § 1.1.07]

RULE 9 PROCEDURE TO BE APPLIED

(a) The Court shall follow the procedures governing civil actions as set forth in Title 2, and the procedures set forth in applicable Tribal law.

(b) Compliance with the Federal Rules of Civil Procedure, the Federal Rules of Evidence, or the California Code of Civil Procedure is not required in Tribal Court proceedings. Federal or State rules and Federal or State caselaw may be cited to as persuasive argument for purposes of analysis in areas where Federal or State rules are analogous to Tribal rules and Tribal caselaw, but will not be relied upon as precedent requiring that the Court adopt additional rules that are not a part of this Code.

RULE 10 COURT RECORDS

The Tribal Court shall keep for its own information and for inspection by duly authorized and qualified officials, a record of all proceedings of the Court, which record shall reflect the title of the case, the names of the parties, the substance of the complaint, the names and addresses of all witnesses, the date of the hearing or trial by whom conducted, the findings of the Court or jury, and the judgment, together with any other facts or circumstances deemed of importance to the case. Such records of all proceedings shall be kept at the Tribal Court office with duplicate copies in the Tribal vault. Unless sealed by court order, all records of the Tribal Court shall be considered public records and open to inspection by anyone, except juvenile records shall be considered confidential and open to inspection only by order of the Hoopa Valley Tribal Court.

(a) Publication of Decisions. The Chief Judge shall designate decisions of the Court and the Court of Appeals to be published in the Hoopa Valley Tribal Court Reporter.

RULE 11 COURT LIBRARY

(a) Copies of Law. The Tribal Court shall secure and maintain current copies of the Constitution and Bylaws of the Hoopa Valley Tribe, this Tribal Code, all pertinent resolutions, ordinances, or enactments of the Tribal Council, Title 25 of the Code of Federal Regulations, and such regulations as may be applicable to the conduct of the business of the Court.

(b) Court Library. A full and complete Indian Law Library shall be of high priority of the Tribal Court. The Court Library shall be used primarily for Tribal Court, Tribal Legal

Department, and Tribal Police personnel. Any tribal member, party to case, or Tribal Bar member, may have access to the Court Library, provided that no volumes of documents shall be taken from the Tribal Court office without prior approval. Each item shall be signed out by an authorized Court employee who shall be held personally responsible for its return.

Section 6: Court Proceedings

RULE 12. COURT PROCEEDINGS: DEFINITIONS

(a) Motion Hearings. A motion hearing is a pretrial proceeding and takes place when a party has asked the Court to order that something be done in connection with a pending case. Hearings on motions are not automatic. See Rule 13E. Hearings will be set when oral argument would be helpful to the Court and on request of a party or parties or the Court's own motion. Motions may be filed to add or eliminate parties, to amend pleadings, to request a jury trial, to prepare or simplify a case for trial, or to request judgment as a matter of law in the absence of material disputed issues of fact. [summary judgment]

(b) Conference Hearings. Conference hearings may be scheduled on a written request of one or more parties, or on the Court's own initiative. The purpose of a conference hearing is to simplify the resolution of the case, to discourage wasteful pretrial activities, and to improve the quality of the trial through preparation by discussing such things as settlement prospects, facts and issues not in dispute, evidence to be presented, appropriate witnesses, and jury trial requests. To encourage honest discussion, nothing said at a conference hearing shall be admitted in evidence. Conference hearings may, in the exercise of the Court's discretion, on request of a party or on the Court's own motion, be held off the record.

(c) Trial. A trial is the hearing of the case on its merits, after the parties have had a reasonable time to prepare their cases for submission to the Court. Generally, trials will be set on a written request from one or more parties, or at a conference hearing. Trials shall be set for hearing as soon as reasonable possible after receipt of a request for trial, as may be consistent with the rights of all parties to have time to prepare their cases.

RULE 13 TRIAL

All trials upon the merits shall be conducted in open court and so far as convenient in a regular court room. All other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of the Clerk and at any place either within or without the Hoopa Valley Indian Reservation; but no hearing, other than ex parte, shall be conducted outside the Hoopa Valley Indian Reservation without the consent of all parties affected thereby.

[See Tribal caselaw for precedent. FRCP 77 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(a) Time of Trial. Trial will be held as expeditiously as may be possible, taking into account the Court's schedule and the rights of all parties to properly prepare their cases.

[See Tribal caselaw for precedent. FRCP 40 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

RULE 14 ADMISSION OF EVIDENCE

The admission of evidence will be controlled by the Court in accordance with Title 2, Chapter 5, Rules of Evidence so as to secure the rights of the parties and do substantial justice.

RULE 15 DISMISSAL OF ACTIONS

(a) Voluntary. An action may be dismissed by the plaintiff without order of the court by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever occurs first, or by filing a stipulation of dismissal signed by all parties who appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any other court an action based on the same claim.

(b) Involuntary. For failure of the plaintiff to prosecute or to comply with these Rules a defendant may move for dismissal of an action or of any claim against the defendant. Unless the court in its order for dismissal otherwise specifies, the dismissal under this subsection, other than any dismissal for lack of jurisdiction, for improper venue, or for failure to join a proper party under Title 2, § 2.2.04, operates as an adjudication on the merits.

RULE 16 COUNTERCLAIM, CROSS-CLAIM, OR THIRD-PARTY CLAIM

The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant subsection (1) shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

(a) Costs. If a plaintiff who has once dismissed an action in court commences an action based upon or including the same claim against the same defendant, the court may make an order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

[See Tribal caselaw for precedent. FRCP 41 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

RULE 17 CONSOLIDATION; SEPARATE TRIALS

When actions involving a common question of law or fact are pending before this court, it may order a joint hearing or trial of any or all matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

[See Tribal caselaw for precedent. FRCP 42 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

RULE 18 TAKING OF TESTIMONY

In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by Tribal Ordinance or these Rules. When a motion is based on facts not of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct the matter be heard wholly or partly on oral testimony or deposition.

[See Tribal caselaw for precedent. FRCP 43 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

RULE 19 COURT REPORTER, STENOGRAPHER; TAPE RECORDING, STENOGRAPHIC REPORT OR TRANSCRIPT AS EVIDENCE

Whenever the testimony of a witness at a trial or hearing which was recorded or stenographically reported is admissible in evidence at a later trial, it may be proved by the recording or transcript thereof duly certified by the person who recorded or reported the testimony.

[See Tribal caselaw for precedent. FRCP 80 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

RULE 20 PROOF OF OFFICIAL RECORD

An official record, or entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by the person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) of any state, federal, or tribal official whose certification of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness and official position relating to the attestation.

RULE 21 DETERMINATION OF FOREIGN LAW

Whenever the Court is acting as the court of another tribe, or is applying federal law, or determining whether to enter the judgment of another court, the party who intends to raise an issue concerning the law of another tribe, federal or state law shall give notice by pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Title 2, Chapter 5, Rules of Evidence.

RULE 22 JUDGMENT AS A MATTER OF LAW IN ACTION TRIED BY JURY; ALTERNATIVE MOTION FOR NEW TRIAL, CONDITIONAL RULINGS

(a) Judgment as a Matter of Law. If during a trial by a jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained without a favorable finding on that issue.

(1) Motions for judgment as a matter of law may be made at any time before submission of the case to the jury. Such a motion shall specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment.

[See Tribal caselaw for precedent. FRCP 50 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(b) Renewal of Motion for Judgment After trial; Alternative Motion for New Trial:

(1) A motion for a new trial under Rule 40 may be joined with a renewal of a motion for judgment as a matter of law, or a new trial may be requested as an alternative. Such a motion may be renewed by service and filing not later than 10 days after entry of judgment. If a verdict was returned, the court may, in disposing of the renewed motion, allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as a matter of law. If no verdict was returned, the court may, in disposing of the renewed motion, direct the entry of judgment as a matter of law or may order a new trial.

(2) If the renewed judgment as a matter of law is granted, the court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is conditionally granted, the order thereon does not effect the finality of the judgment. In case the motion for a new trial has been conditionally denied, the appellee on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

(3) The party against whom judgment as a matter of law has been rendered may serve a motion for a new trial pursuant to Rule 40 not later than 10 days after entry of the judgment.

(4) If the motion for judgment as a matter of law is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling the party to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment. If the appellate court reverses the judgment, nothing in this rule precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

[See Tribal caselaw for precedent. FRCP 50 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

RULE 23

INSTRUCTIONS TO JURY: OBJECTIONS

At the close of evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. The court shall inform the parties or the parties spokesperson or counsel of its proposed action upon the requests prior to their arguments to the jury. The Court, at its election, may instruct the jury before or after argument, or both. No party may assign as error the giving or the failure to give instruction unless the party objects thereto before the jury retires to consider the verdict, stating distinctly the matter objected to and the grounds of the objection. Opportunity shall be given to make the objection out of the hearing of the jury.

[See Tribal caselaw for precedent. FRCP 51 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

RULE 24

FINDINGS BY THE COURT

In all actions tried upon the facts without a jury, the Court shall find the facts specifically and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 34, Entry of Judgment; in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its actions.

[See Tribal caselaw for precedent. FRCP 52 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

RULE 25

POST TRIAL BRIEFS

The judge may order an issue of law of central importance to the case to be briefed after trial. Judgment may be delayed until after the issue has been briefed.

(a) Due dates for such briefs will be established by the Court before the conclusion of the trial. Continuances of post trial brief deadlines are disfavored.

Section 7: Jury's; Jury Trials

RULE 26

JURY TRIALS

(a) Offenses Punishable by confinement. Any person accused of an offense punishable by confinement shall have the right to a jury trial upon request.

[See Tribal caselaw for precedent. FRCP 38 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(b) Civil Actions. In civil actions, the Court shall have discretion to allow a jury trial on request of the party, upon written request by any party at least 5 working days before the trial

date, and upon such party posting a fee or other security in the amount of Three Hundred Dollars (\$300.00) to cover costs, disbursements and jury fees in the case. Such fee may be waived by the Tribal Court upon a showing of good cause.

(c) Eligible Jurors. A list of the eligible jurors shall be prepared by the Tribal Court each year. Any person eighteen (18) years of age or more who is a Tribal member and a resident of the Hoopa Valley Reservation for six (6) months or more shall be eligible to be a juror. The judge of the Court may excuse a prospective juror, but only on a showing of hardship. Members of the Tribal Council and employees of the Tribal Court and Tribal Police shall be exempt from jury service during their service in such offices.

(d) Selection and Number of Jurors. A jury shall consist of six (6) persons. The names of potential jurors shall be drawn by lot from the Hoopa Valley Tribe's list of registered voters who reside on or within twenty-five miles of the Hoopa Valley Indian Reservation. The Clerk of the Court shall randomly select, and notify, thirty (30) persons for service as potential jurors.

(e) Challenges. Any party to the case may challenge and have dismissed not more than three jurors-selected from the list of eligibles without cause, but there shall be no limit to challenges for cause. The judge shall decide as to the sufficiency of a challenge for cause.
Jurors [47, 48,]

(f) Instruction to Jury. The judge shall instruct the jury in the laws governing the case, and the jury shall decide issues presented to it in conformity with such instructions. The judge will render judgment in accordance with the verdict and existing law.

(g) Jury Fees. Every person who is required to attend Court for selection or service as a juror shall be entitled to a fee of Fifteen Dollars (\$15.00) a day for each day his/her services are required by the Court, plus twenty (20) cents a mile for traveling to and from the Court. In cases other than those initiated by the Hoopa Valley Tribe, the party requesting a jury trial, upon granting of the request by the Court and no later than five (5) working days prior to the date set for trial, shall post estimated first day jury fees in the amount of Two Hundred Dollars (\$200.00) with the Clerk of the Court. The actual total expense of jury fees shall become the responsibility of the losing party and shall be assessed as a cost in the case; however, a losing party who did not request a jury trial may be relieved of this expense by the Court in the interests of justice.

(h) Jury Questions. ("Voir Dire")

1. Any party may submit proposed questions for prospective jurors to the Court.

2. All jury questions must be in easy to understand terms and must accurately reflect the law applicable to the regulation allegedly violated.

3. The Court shall review the questions and shall select the most appropriate to ask each juror.

4. The parties shall then have an opportunity to ask follow-up questions to those asked by the judge. The Court shall control such questioning so as to prevent undue consumption of time and harassment.

(i) Jury Instructions.

1. The parties may submit proposed jury instructions to the Court.

2. All jury instructions must be in easy to understand terms and must accurately reflect the law and/or custom applicable to the regulation allegedly violated.

3. At the conclusion of trial, the judge shall instruct the jury as to the issues it must decide and the law applicable to those issues.

4. Jury instructions that are given by the judge at the conclusion of trial shall be selected from the proposed instructions and any additional instructions deemed necessary by the judge.

[See Tribal caselaw for precedent. FRCP 49 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

Section 8: VERDICTS; JUDGMENTS

RULE 27 VERDICT - - JURY

When at least five of the six jury members agree on a verdict, they shall return the verdict through their foreman to the judge in open court.

(a) Special Verdicts. The Court may require a jury to return only a special verdict in the form of a written finding upon each issue of fact. In that event the Court may submit to the jury written question susceptible of categorical or other brief answer or may submit written forms of the several special findings which may properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The Court shall give the jury such explanation and instruction concerning the matter as may be necessary to enable the jury to make its findings upon each issue.

[See Tribal caselaw for precedent. FRCP 49 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

RULE 28 VERDICT - - JUDGE

In cases tried without a jury, the Court shall enter its verdict in open court, or at the judge's discretion, within 15 days from the time of the end of the presentation of all testimony and evidence.

RULE 29 JUDGMENTS - - GENERALLY

In all civil cases, judgment shall consist of an order of the Court awarding money damages to be paid to the injured party, or directing the surrender of certain property to the injured party, or the performance of some other act for the benefit of the injured party.

(a) Judgment After Court Trial. In non-jury matters, the Court, after the submission of all evidence, will enter its judgment in conformity with the evidence in open court, or at the judge's discretion, within 15 days from the time of the end of the presentation of all testimony and evidence.

(b) Judgment After Jury Trial. After the jury renders its verdict the Court shall enter a judgment in accordance with said verdict. However, upon motion of a party, or on its own motion, if the Court concludes that the jury verdict is at such variance with the state of the evidence that no reasonable jury could have so found, then the Court may enter a judgment in place of the jury's verdict (judgment notwithstanding the verdict.).

(c) Judgment as a Matter of Law; Alternative Motion for a New Trial; Conditional Rulings.

1. Judgment as a Matter of Law. If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may determine the issue against the party and may grant a motion for judgment as matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained without a favorable finding on that issue. Motions for judgment as a matter of law may be made at any time before submission of the case to a jury. Such a motion shall specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment.
[See Tribal caselaw for precedent. FRCP 50 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2. Renewal of Motion for a New Trial; Alternative Motion for a New Trial
Whenever a motion for a judgment as a matter of law made at the close of all evidence is denied or for any reason not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Such a motion may be renewed by service and filing not later than 10 days after entry of judgment. A motion for a new trial under Rule 40 may be joined with a renewal of the motion for judgment as a matter of law, or a new trial may be requested as an alternative. If the verdict was returned, the court may, in disposing of the renewed motion, allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as a matter of law or may order a new trial.

3. Same: Conditional Ruling on Grant of Motion. If the renewed judgment as a matter of law is granted, the court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for a new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the appellee on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

(A) The party against whom judgment as a matter of law has been rendered may serve a motion for a new trial pursuant to Rule 40 not later than 10 days after entry of judgment.

4. Same: Denial of Motion. If the motion for judgment as a matter of law is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling the party to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment. If the appellate court reverses the judgment, nothing in this rule precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

RULE 30 DEFAULT JUDGMENT

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, including failing to appear at a scheduled hearing after been noticed to appear, and that fact is made to appear to the Court, the Court shall enter the party's default. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third party plaintiff, or a party who has pleaded a cross-claim or counterclaim.

(a) If the party against whom judgment by default is sought has appeared in the action, the party (or if represented, the party's representative) shall be served with written notice of the application for judgment at least three (3) days prior to the hearing on such application. If, in order to enable the Court to enter judgment it is necessary to take an account or determine damages or to establish truth of any averment by evidence or to make an investigation of any matter, the Court may conduct such hearings as it deems proper.

(b) For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 41.

[See Tribal caselaw for precedent. FRCP 55 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

RULE 31 SUMMARY JUDGMENT

Any party may move for summary judgment in any action or proceeding if it is contended that the action has no merit or that there is no defense thereto. The motion may be made at any time after the expiration of time periods allowed for answering a complaint or responding to a motion pursuant to Title 2, § 2.4.4.

RULE 32 DECLARATORY JUDGMENTS

The procedure for obtaining a declaratory judgment shall be in accordance with these rules. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for declaratory judgment and may advance it on the calendar. [57; 28 USC § 2201]

[See Tribal caselaw for precedent. FRCP 57; 28 U.S.C. § 2201 may be looked to, and cases pertaining to these rules may be cited to as persuasive argument]

RULE 33 FINDINGS BY THE COURT; JUDGMENT IN PARTIAL FINDINGS

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the Court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 34; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Findings of fact are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous.

RULE 34 ENTRY OF JUDGMENT

Upon a decision by the Court, or upon a general verdict by a jury, the Court shall enter the judgment. Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and when entered as provided in Rule 6 (a) (2). Entry of the judgment shall not be delayed, nor the time for appeal extended, in order to tax costs or award fees, except under the following:

(a) If any party files a timely motion of a type specified below, the time of appeal for all parties runs from the entry of the order disposing of the last such motion outstanding.

1. for Renewal of Motion for Judgment after trial; Alternative Motion for New Trial under Rule 2 (c) (2);
2. to amend or make additional findings of fact under Rule 33, whether or not granting the motions would alter judgment;
3. to alter or amend the judgment under Rule 40;
4. for a new trial under Rule 41; or
5. for relief under Rule 42 if the motion is filed no later than 10 days after the entry of judgment.

[See Tribal caselaw for precedent. FRCP 52(b); 58; 59; 69(b); FRAP 4 (a) (4) may be looked to, and cases pertaining to these rules may be cited as persuasive argument]

RULE 35 JUDGMENT - - COMPENSATION

Where the injury inflicted was the result of carelessness of the defendant, the judgment shall follow any rules of compensation set out in any ordinances or section of this code pursuant to which the action is brought.

RULE 36 PUNITIVE DAMAGES

Where the injury was deliberately inflicted, the judgment may award punitive damages to the prevailing party.

RULE 37 COST OF CIVIL ACTIONS

The court may assess in the accruing costs of the case the party or parties against whom judgment is given. Such costs may consist of the expenses of voluntary witnesses for which either party may be responsible under this Code, and the fees of jurors in those cases where a jury is had, and any further incidental expenses or fees connected with the procedure required by this code before the Court as the Court may direct.

[See Tribal caselaw for precedent. FRCP 54 (attorneys fees excluded) may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

RULE 38 PAYMENT OF JUDGMENTS - - TRIBAL MEMBERS

Whenever the Hoopa Tribal Court shall have ordered payment of money damages to an injured party and the losing party refuses to make such payment, within the time set for payment by the Court, and when losing party has sufficient funds to his/her credit to pay all or part of such judgment, the Chairperson shall certify the record of the case and the amount of the available funds. If the Tribal Council shall so direct, the disbursing agent shall pay over to the Tribal Council the amount of the judgment, or such lesser amount as may be specified by the Tribal Council, from the account of the delinquent party.

RULE 39 PAYMENT OF JUDGMENTS - - TRIBAL EMPLOYEES

Whenever the Hoopa Tribal Court shall have ordered payment of money damages to an injured party and the losing party refuses to make such payment, within the time set for payment by the Court, and when the losing party has sufficient funds to his/her credit within Tribal operations to pay all or part of such judgment, the Chairman of the Tribal Board or Committee shall certify to the Tribal Chairman the record of the case and the amount of the judgment, or a lesser amount as may be specified by the Tribal Chairman, from the account of the delinquent party. In the absence of any program or entity board or committee, the program or department manager shall act in their stead for the purposes of this section.

RULE 40

JUDGMENTS AND DEFENDANT'S ESTATES

A judgment shall be considered a lawful debt in all proceedings by the Department of Interior or by the Court to distribute decedent's estates.

[See Tribal caselaw for precedent. FRCP 52 (b) may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

RULE 41

NEW TRIALS; AMENDMENTS OF JUDGMENT

A new trial may be granted to all of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the court; and (2) in an action tried without a jury, for any of the reasons for which rehearing has heretofore been granted in suits in equity in the court. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(a) Time for Motion. A motion for a new trial shall be served not later than 10 days after the entry of judgment.

(b) On Initiative of the Court. Not later than 10 days after entry of judgment the court on its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds thereof.

(c) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment.

[See Tribal caselaw for precedent. FRCP 59 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

RULE 42

RELIEF FROM JUDGMENT OR ORDER

(a) Clerical Mistakes. Clerical mistakes in judgment, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon terms that are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 41 (a);

fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made not later than 10 days after judgment for reason (1) and for reasons (2) and (3), not more than one year after entry of judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court.

[See Tribal caselaw for precedent. FRCP 60 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

RULE 43 HARMLESS ERROR

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such actions appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

[See Tribal caselaw for precedent. FRCP 61 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

RULE 44 AUTOMATIC STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

Unless provided by Tribal ordinance or stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry.

(a) An injunction or receivership action shall not be automatically stayed during the period after it's entry and until appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the Court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

[See Tribal caselaw for precedent. FRCP 63 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

Provisional and Final Remedies

Section 9: Execution

RULE 46 EXECUTION (Process to Enforce a Judgment)

The Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. Remedies thus available include attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies however designated and regardless of whether the remedy is ancillary to an action or must be obtained by an independent action.

[See Tribal caselaw for precedent. FRCP 64, 69 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

RULE 47 SEIZURE OF PROPERTY

If, after the time for appeal has run, it is made to appear to the Court that the judgment debtor has not paid the judgment amount in full or is not making payment in a manner agreed to by the parties, the Court shall order the judgment debtor to appear before it and answer under oath regarding all his/her personal property. The court shall then determine what property of the judgment debtor is available for execution and order the Tribal Police to seize as much of such property as reasonably appears necessary to pay the judgment. Failure of the judgment debtor to appear may be deemed a contempt of court and the court may proceed without such appearance. [Formerly Title 2, § 2.6.01]

(a) Sale of Property. Sale of the seized property shall be at public auction conduct by the Tribal Police after giving at least 30 days public notice posted in at least three public places on the reservation. Property shall be sold in a commercially reasonable manner to the highest bidder who shall make payment for the property at the time of the sale. If the sale results in a higher price than the debt, plus expenses of the sale, debtor shall be given the surplus. The judgment shall continue in effect in the amount not recovered at the sale, plus expenses of the sale. After sale, a 60 day escrow period will be provided for the debtor to comply with the order of the Court. After the escrow period expires, the sale shall be final. [Formerly Title 2, § 2.6.02]

(b) Record of Sale. A complete and accurate record of the sale shall be kept including receipts and descriptions of property and any other information as deemed necessary. [Formerly Title 2, § 2.6.03]

RULE 48 JUDGMENT OF SPECIFIC ACTS

On application of the party entitled to performance of a writ of execution, the Court shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The Court may also in proper cases adjudge the party in contempt.

[See Tribal caselaw for precedent. FRCP 70 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

RULE 49 EXEMPTION FROM EXECUTION

The Court shall only order seizure and sale of such property of the judgment debtor the loss of which will not impose an immediate and substantial hardship on the immediate family of the judgment debtor. Ceremonial regalia, basketry, and other traditional items used for cultural or religious purposes are exempt from seizure. Only property of the judgment debtor him/herself may be subject to execution and not property of his/her family. [Formerly Title 2, § 2.6.04]

Section 10: Injunctions

RULE 50 INJUNCTIONS

(a) Form and Scope. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

(1) Preliminary Injunction.

(A) Notice. No preliminary injunction shall be issued without notice to the adverse party.

(B) Consolidation of Hearing with Trial on the Merits. Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial.

(2) Temporary Restraining Order; Notice; Hearing; Duration. A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if:

(A) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition; and

(B) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required.

(C) Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall define the injury and state why it is irreparable

and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the Court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be stated in the order extending the period.

(1) Domestic Violence. Where a temporary restraining order is issued to protect the applicants health and safety, and/or the health and safety of the applicant's immediate family, the order shall expire by its terms within such time after entry, not to exceed 30 days, as the Court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be stated in the order extending the period.

(D) When a temporary restraining order is granted without notice, the Court will hold a hearing at the earliest possible time to hear the motion for a preliminary injunction. Such hearing takes precedent of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if the party does not do so, the court shall dissolve the temporary restraining order.

[See Tribal caselaw for precedent. FRCP 65 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(3) Security. No restraining order or injunction shall be issued except upon the giving of security by the applicant in such sum as the Court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. This security requirement does not apply to actions involving domestic violence.

RULE 51

OFFER OF JUDGMENT

(a) At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property or to the effect specified in the offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the Court shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence that an offer was made is not admissible except in a proceeding to determine costs.

(b) If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer.

(c) When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the adjudged liable party may make an offer of judgment, which shall have the same

effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

[See Tribal caselaw for precedent. FRCP 68 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

RULE 52 PROCESS IN BEHALF OF AND AGAINST PERSONS NOT PARTIES

When an order is made in favor of a person not a party to the action, that person may enforce obedience to the order by the same process as if a party. Also, when obedience to an order may be lawfully enforced against a person not a party, that person is liable to the same process for enforcing obedience to the order as if a party.

[See Tribal caselaw for precedent. FRCP 71 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

Section 11: Recognition and Enforcement of Foreign Judgments

RULE 53 AUTHORITY; PROOF REQUIRED; STANDARDS

(a) The Court shall have full and total discretion regarding recognition and enforcement of foreign judgments. The Court shall not recognize and enforce any foreign judgment unless the proponent of the foreign judgment:

- (1) Complies with the procedure set forth in Title 2; the jurisdiction of the Court;
- (2) Submits proof that the person against whom the foreign judgment has been rendered is subject to;
- (3) Submits proof that the foreign judgment is based on valid subject matter jurisdiction; and
- (4) Submits proof that the foreign judgment is final and that no appeal therefrom is pending.

(b) The Court need not recognize a foreign judgment if:

- (1) The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to allow him to defend;
- (2) The foreign judgment, decree or order violates the Indian Civil Rights Act of 1968, 25 U.S.C. §§1301-1301;
- (3) The foreign judgment was obtained by fraud;
- (4) The foreign judgment would require the Hoopa Valley Tribe to waive its sovereign immunity from actions seeking money judgments, violate any Tribal law, violate any federal law, or the law of the foreign jurisdiction which the judgment was obtained;
- (5) The causes of action on which the judgment is based is contrary to the general welfare of the Hoopa Valley Tribe or its members.

RULE 54

FILING PROCEDURES

Any person may apply to the Tribal Court by written application for an order accepting a civil judgment from another tribal court or a state or federal court as a judgment of the Hoopa Tribal Court.

(a) In order for a foreign judgment to be recognized and enforced, such judgment shall be filed by its proponent with the Court within one year from the date of issuance.

(b) A properly filed foreign judgment shall be docketed and recorded in the Court in the same manner as other cases pursuant to Title 2, §2.3.02. Proper filing of a foreign judgment with the Court shall be accomplished when the proponent has filed with the Court Clerk:

(1) A certified copy of the foreign judgment showing the date of its entry in the foreign court;

(2) The record of any subsequent entries affecting it, such as levies of execution and payments in partial satisfaction; and

(3) A motion requesting that the Court recognize and enforce the foreign judgment. The motion shall be accompanied by supporting affidavit stating that the documents filed are what they are purport to be.

(c) Upon proper filing of a foreign judgment with the Court, the Court shall issue a summons directing the defendant to appear on a date not more than 30 days from the date of service and respond to the motion requesting the Court to recognize and enforce the foreign judgment. Such a summons shall be served on the defendant pursuant to Title 2, §§ 2.3.03; 2.3.04.

(d) Where the proponent of the foreign judgment seeks enforcement of same through garnishment or attachment, the Wage Garnishment Ordinance, Title 45, shall also apply.

(e) Failure to appear as directed by summons or failure to respond to the motion requesting the Court to recognize and enforce the foreign judgment once personal jurisdiction over the defendant has been obtained shall not prevent the Court from ruling on the motion.

RULE 55

REVIEW BY COURT

The Court shall hold a hearing to determine whether to grant or deny the motion to recognize and enforce the foreign judgment. After hearing oral argument and reviewing all relevant evidence the Court shall decide whether or not to enter the foreign judgment as a Hoopa Valley Tribal Court judgment, and shall issue an Order granting or denying the motion. Such an order shall be a final judgment of the Court in favor of either the plaintiff or the defendant to the foreign judgment and shall be enforceable as such.

[Formerly Title 2, §2.7.02]

RULE 56

PAYMENT OF JUDGMENT

Upon the entry of the Order declaring the other court's judgment to be a judgment of the Hoopa Valley Tribal Court, the provisions of this Code regarding payment of judgments and execution shall be applied. [Formerly Title 2, § 2.7.03]

RULE 57 SETTLEMENT IN CASES INITIATED BY THE HOOPA VALLEY TRIBE

(a) Settlement Offer. The tribal attorney or enforcement officer presenting the Tribe's case may make a settlement offer to defendant(s) in writing prior to the trial.

(b) Plea Bargain. The judge shall not be bound to accept an agreed upon plea bargain. If the judge rejects the plea bargain, the defendant(s) may reinstitute the not guilty plea.

RULE 58 SETTLEMENT IN ALL OTHER CASES

In cases other than those initiated by the Hoopa Valley Tribe, the parties may settle the case without the consent of the Court, unless a manifest injustice would result. Upon reaching an agreement to settle, the parties should write out the settlement in full, and secure the signatures of all parties. The settlement agreement should clearly set forth whether dismissal or other action of the Court is requested. The Court shall dismiss the action, or enter judgment in accordance with the settlement agreement, as agreed to by the parties, unless it appears to the Court that a manifest injustice would result, in which case the Court will schedule the matter for hearing. Parties who have settled the case should orally notify the Clerk of the Court as soon as possible.

RULE 59 INFORMAL DISPUTE RESOLUTION

Nothing in this Code or in the Rules of the Hoopa Tribal Court shall prevent persons involved from resolving their dispute through any other lawful means; negotiation, mediation, etc. [Formerly Title 2, § 2.4.07]

RULE 60.0 CONTEMPT OF COURT

The Hoopa Valley Tribal Court has the inherent power to adjudge persons to be in civil contempt of court. The judgment and orders of the court or judge made in case of contempt are final and conclusive.

RULE 60.1 ACTS OR OMISSIONS CONSTITUTING CONTEMPT

The following acts or omissions in respect to the tribal court or tribal court proceedings are contempts of the authority of the court:

1. Disorderly, contemptuous, or insolent behavior toward the judge while holding court, tending to interrupt the due course of a judicial proceeding.
2. A breach of peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a judicial proceeding.

3. Misbehavior or willful neglect or violation of duty by a spokesperson or other person in the performance of a judicial service.
4. Abuse of the process or proceedings of the court, or falsely pretending to act under authority of an order or process of the court.
5. Disobedience of any lawful judgment, order, or process of the court.
6. Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness.
7. Any other unlawful interference with the process or proceedings of a court.

RULE 60.2 CONTEMPT PROCEEDINGS

1. If a contempt is committed in the presence of the court or of the judge in chambers, it may be penalized summarily. An order of contempt shall be made reciting the facts as occurring, a finding of civil contempt, and the penalty imposed.

2. If a contempt is not committed in the presence of the court or of the judge in chambers, a contempt proceeding shall be based on an affidavit of the facts constituting the contempt presented to the court and an order to show cause and notice of hearing shall issue and be personally served on the alleged offending person. The order to show cause and notice of hearing may be made by means of certified mail, return receipt requested only if personal service is not possible or if the alleged offending person resides outside the exterior boundaries of the Hoopa Valley Indian Reservation.

RULE 60.3 PENALTIES FOR CIVIL CONTEMPT

1. The court may impose a fine not to exceed \$500 against a person adjudged to be in contempt.
2. Contempt judgments may be enforced in the same manner as other Tribal Court judgments. This enforcement includes: If a person adjudged to be in contempt fail to pay the fine when due and is a tribal member, the court may order assignment of that person's per capita payments. If a person adjudged to be in contempt fails to pay the fine when due and is an employee of the Hoopa Valley Tribe, the court may order wage garnishment.

Section 12: Appeals

RULE 61 NOTICE OF APPEAL

Within ten (10) days from the entry of judgment, a party dissatisfied with the judgment may file a notice of appeal with this Court. Said party shall give proper assurance to the Court, through the posting of a bond or such other means as will satisfy the judgment if affirmed, as a precondition to having the right to appeal.

(a) Commencement of Action: An appeal is commenced by filing a notice of appeal with the Hoopa Valley Court of Appeals. Persons and entities other than the Hoopa Valley Tribe may initiate actions in the Court by filing an appeal which conforms to Title 2, Chapter 6, and a copy to be served to the respondent, or if there are more than one respondent, the number of

copies necessary to serve all the respondents named in the action. Upon payment of the filing fee, the Clerk shall accept the original appeal for filing.
[Formerly Title 2, §2.03.01]

(b) Filing Fee: The filing fee for appeals of Tribal Court decisions shall be \$150.00. Filing fees for TERO decisions shall be \$50.00

RULE 62 STAY OF EXECUTION

In any case where a party has perfected his/her right of appeal as established herein by Rules of Court, a stay of execution of judgment shall be granted and the sentence shall not be carried out unless affirmed by the Court of Appeals.

RULE 63 APPELLATE TRIAL

Within 45 days from the date of written notice of appeal, the appellate court shall convene unless delay is warranted by good cause, to hear the case on appeal at such place and time as may be designated. The appellate trial shall be held and court procedures shall be the same as in other cases before the Tribal Court, except that there shall be no trial by jury.

RULE 64 EVIDENCE

The same record and evidence that was used in the Trial Court shall be used in the appellate proceedings. Only in extreme and rare circumstances which would affect the proper application of justice and the rights of the appellate shall any additional evidence be allowed in the appellate proceedings.

RULE 65 TAX APPEAL

Any party contesting the assessment of any taxes owed to the Hoopa Valley Tribe, or any appealing a judgment for taxes owed or a judgment for any other remedy provided under any tax ordinance of the Tribe, must pay the assessed tax or judgment, or provided security equal to the amount of such taxes or judgment, before he/she may appeal under this Chapter. Upon the payment of such taxes and upon posting of a \$100 bond for costs, the appealing party may be granted a stay of execution as to the part of the judgment other than the taxes found to be owing, and that of the judgment shall not be carried out unless and until affirmed by the Court of Appeals. Any forfeiture of seized goods shall be stayed pending the appeal, and the Court shall hold the goods seized in a safe place until the final resolution of the case. If the goods are perishable or subject to sharp decline in value, the Court may sell such goods in a commercially reasonable manner and hold the amount realized until the final resolution of the case.

Section 13: Miscellaneous

RULE 66 NET SEIZURE

Where Tribal Law Enforcement has seized a net pursuant to the provisions of Title 16 of this Code, and has filed a citation with the Tribal Court, the Clerk shall arrange for publication of Notice of Citation in the Hoopa Valley People Newspaper. Publication of such notice must actually occur at least once before the Tribal Court may act upon the citation. In addition, the Notice of Citation shall be posted by the Court Clerk on the bulletin boards at the Neighborhood Facility Building, and as Ray's Market in Hoopa.

RULE 67 INITIATION OF WORKER'S COMPENSATION CASES

A party may initiate a claim with the Hoopa Valley Tribal Court by filing any of the following:

- A. Application For Adjudication;
- B. Lien;
- C. Stipulation with Request For Award; or
- D. Compromise and Release.

There shall be only forms approved by the Hoopa Valley Tribe and/or the Third Party Administrator.

RULE 68 ISSUANCE OF ORDERS IN THE INTEREST OF SUBSTANTIAL JUSTICE

Where this Title does not expressly address a question, the Court may issue any order to accomplish substantial justice.

If this court determines that it is in the interest of substantial justice, this court has the discretion to hold pro se litigants to a lesser standard of compliance with procedural and substantive law than for litigants who are represented by a spokesperson or an attorney. This court has the discretion to construe any and all documents filed in the court by pro se litigants in a liberal manner so as to provide for the just determination of those proceeding, secure simplicity in procedure, fairness in administration and/or the elimination of unjustifiable expense or delay.

RULE 69 SAVINGS CLAUSE

If any provision of this Title is declared to be invalid, the remaining provisions shall not be affected.

APPROVED THIS 9TH DAY OF NOVEMBER, 1999.

Byron Nelson, Jr.
Chief Judge

Attest: _____

Lisa Grant
Clerk of the Court